

CLOSURE, POSTCLOSURE MAINTENANCE, AND FINANCIAL ASSURANCE FEE

FREQUENTLY ASKED QUESTIONS

Applicability

- How many closed and active landfills are under consideration for this fee?

Currently, there are 288 landfills subject to these requirements. At this time 122 of these landfills are certified closed. In addition there are 29 landfills that are not accepting waste and are in the process of closing. The landfills subject to the fee are the same landfills subject to the closure and postclosure maintenance plans and financial assurances required pursuant to Public Resources Code Section 43500 et seq. Please note that of the remaining 137 landfills, some pay little or no tipping fee revenue to the IWMA.

- Are only landfills operating after January 1, 1988, being considered for the proposed fee?

Yes, these regulations apply to landfills that operated on or after January 1, 1988. The landfills subject to the fee are the same landfills subject to the closure and postclosure maintenance plans and financial assurances required pursuant to Public Resources Code Section 43500 et seq.

Cost Determination

- What is the target amount of funds that CalRecycle is seeking with this fee including staff costs?

The target amount is that budgeted for the implementation of the requirements for landfill closure and postclosure maintenance plans and financial assurance submittal and implementation. The current amount is estimated to be between \$2.75 and \$3.0 million.

- What is the range of staff review costs per landfill?

There is a wide range of costs per landfill depending upon size, complexity, design, etc. The fee proposal is to recover the total staff cost as an aggregate. The proposed approach annualizes a range of costs that will vary extensively over a five-year period for each landfill caused by the permit review cycle and other operational and maintenance aspects faced by disposal site operators. The fee will result in a cost to landfills that is reasonably related to the cost of services provided over time.

- Please explain how the fee will be calculated?

The fee will be based on the total cost of staff assigned to the covered programs and apportioned to landfills based on size. The staff cost includes salary, benefits, overhead, and direct and indirect costs. At the present time there is one (1) supervisor and five (5) staff in the financial assurance program and one (1) supervisor and seven (7) staff in the closure and postclosure and corrective action unit. In addition the function is supported by one (1) manager and one-half (0.5) of an attorney position.

- How much of the Financial Assurance staff costs is the IWMA covering and what is remaining to cover? Does the revenue from the new fee exceed the cost recovery needed?

The fee is intended to cover only the current amount that is budgeted for staff that implement the requirements for landfill closure and postclosure maintenance plans and financial assurance submittal and implementation. Therefore, there would not be any excess funds, and if not all landfills pay the fee, there will be a deficit.

- Is the proposed fee solely being spent on Financial Assurance staff time? Or will some of the money be spent elsewhere?

The fee is intended to cover the current amount that is budgeted for staff that implement the requirements for landfill closure and postclosure maintenance plans and financial assurance submittal and implementation. The staff covered by the fee are in the Financial Assurance and Closure Programs along with associated supervisory, clerical, and legal staff.

- At \$15,000 per year for five years for the largest landfills, this amounts to \$75,000. This seems excessive for reviewing updates in JTD, proactive monitoring plans, and corrective action plans during the five-year review.

Based on current size data, the fee for a “very large” landfill would be approximately \$75,000 over a five-year period. This represents about 1/200 of the total staff costs. When considering actual line staff time (i.e., excluding supervisory, managerial, clerical, and legal staff; staff leave time; incidental required training and work of a general nature [activity not associated with a specific landfill such as regulation and data base maintenance and legislative review]), the fee for a very large landfill represents only about 460 hours over a five-year period. Smaller landfills would represent proportionally fewer hours with a very small landfill equating to 184 hours.

Furthermore, staff work on a landfill is not limited to activities associated with the five-year review of closure, postclosure maintenance, and corrective action plans and related cost estimates and financial assurances but also encompasses activities including, but not limited to: inspections; compliance and enforcement actions; review of partial closure and postclosure maintenance plans, postclosure land uses, revised/updated plans and cost estimates submitted outside of the five-year review; and remediation plans; review of postclosure maintenance annual draw-down requests and five-year step-down requests; annual review of financial assurances for inflation; annual review of trust/enterprise funds for required deposits; review of disbursement requests from financial mechanisms; and review of substitutions of financial mechanisms.

- Why not estimate the staff hours required to perform the five-year review and use that to calculate the annual fee rather than start with what it takes to support the entire Financial Assurance section of the department?

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There is a wide range of costs per landfill depending upon size, complexity, design, etc. The fee proposal is to recover the total staff cost as an aggregate. The proposed approach annualizes a range of costs that will vary extensively over a five-year period for each landfill caused by the permit review cycle and other operational and maintenance aspects faced by disposal site operators. The fee will result in a cost to landfills that is reasonably related to the cost of services provided over time.

- Was an assessment made on how much staff is actually needed to perform the essential Financial Assurance oversight functions? Or is the fee being used to maintain the current staffing level? Operators and local government have to stay within the budget that was approved and make the necessary adjustments in staffing and programs.

Historical staffing in the programs has fluctuated. The staffing responsible for reviewing closure and postclosure maintenance plans and cost estimates was at 10.5 positions (including clerical support and management) in the early 1990’s. Staffing is currently at 8.5 positions even though the workload has significantly increased by more than half. The staffing responsible for review and approval of financial

mechanisms has been more consistent, but also has fluctuated. All recent staffing changes have been through previous Budget Change Proposals (BCPs) approved through the Budget Act.

Fee Basis

- Will closed sites be assessed a different rate than active landfills?

No, the current draft regulations contemplate no differentiation between closed and active sites in the fee paid.

- Is the fee being assessed on a permitted capacity basis or per ton of incoming wastes?

The fee is based on landfill size – total air space capacity. Air space capacity means the volume (cubic yards) contained between the excavation plan surface and the final fill plan surface (i.e., from the bottom of the excavation to the top of the final cover) taking into consideration design slopes, benches, and other design features, as authorized by the current solid waste facility permit. For a disposal site that has been certified as closed pursuant to 27 CCR §21880, air space capacity is calculated based on the final closure geometry of the disposal site.

- If a per ton fee is established, will the fee be assessed on all materials received including recyclables?

No per ton fee is proposed.

- Will fee be placed on tonnage of material entering the site, or only on tonnage landfilled?

The fee is based on landfill size – total air space capacity – not on tonnage. Air space capacity means the volume (cubic yards) contained between the excavation plan surface and the final fill plan surface (i.e., from the bottom of the excavation to the top of the final cover) taking into consideration design slopes, benches, and other design features, as authorized by the current solid waste facility permit. For a disposal site that has been certified as closed pursuant to 27 CCR §21880, air space capacity is calculated based on the final closure geometry of the disposal site.

- Why is an annual fee being considered when many landfills financial assurances are not even reviewed until the five year review?

CalRecycle is proposing an annual regulatory fee because this type of fee is more effective and less burdensome to public agencies and private entities because it is a predictable cost. It is also a less expensive fee to administer and should result in lower costs to the regulated community. This fee approach also provides a consistent and predictable revenue source for CalRecycle. This approach also annualizes a range of costs that will vary extensively over a typical five-year period for each landfill caused by the permit review cycle and other operational aspects faced by landfill operators. The annual regulatory fee is consistent with the fee collection methods of other agencies that perform similar work and will result in a cost to landfills that is reasonably related to the cost of services provided over time. The fee is currently proposed to be implemented as follows:

<u>Landfill Size</u>	<u>Air Space Capacity (Million Cubic Yards – MCY)</u>	<u>Percentage of Maximum Annual Fee</u>
<u>Very Small</u>	<u>< 0.25 MCY</u>	<u>40</u>
<u>Small</u>	<u>≥ 0.25 MCY but < 0.5 MCY</u>	<u>55</u>
<u>Medium</u>	<u>≥ 0.5 MCY but < 30 MCY</u>	<u>70</u>
<u>Large</u>	<u>≥ 30 MCY but < 100 MCY</u>	<u>85</u>
<u>Very Large</u>	<u>≥ 100 MCY</u>	<u>100</u>

Accounting

- Will these funds be kept in a separate account or commingled with the IWMA?

The fees will be deposited in a subaccount within the IWMA.

- Will CalRecycle provide an accounting of the use of this fee?

The fee is intended to cover only the current amount that is budgeted for staff that implement the requirements for landfill closure and postclosure maintenance plans and financial assurance submittal and implementation. No other use of the fee is authorized by legislation.

Timing

- When does CalRecycle estimate the fee regulations will be adopted?

CalRecycle's intent is to have the regulations adopted and approved prior to the end of FY 2010-11.

- Rate increases to cover new costs can take up to a year to get approved and some jurisdictions are subject to Prop 218 approvals. When do you estimate that this new rate be effective?

CalRecycle's intent is to have the fee effective for FY 2011-12.

- Operators are already facing the costs of implementing the regulations that were adopted, such as extensive JTD updates, installation of new gas monitoring probes, corrective action plans, and proactive monitoring plans. We would now pay CalRecycle to manage these regulations, which were originally opposed to and viewed as excessive. Could there be a delay or postponement in implementation of these regulations so that operators are not financially hit twice by these regulations?

The proposed fee implemented by the regulations is intended to be implemented for Fiscal Year 2011-12. It is also important to note that the requirement for landfill perimeter gas monitoring wells was required by RCRA Subtitle D in the early 1990's. State regulations were revised to require enforcement of the standards that had not been implemented. Moreover, corrective action plans for non-water quality corrective actions and proactive monitoring plans are not required of operators but are an option should an operator not choose the default standard.

- Implementation of any new fees should be no sooner than July 1, 2011, to allow time to include such an expense in our Budgets.

CalRecycle's intent is to have the fee effective for Fiscal Year 2011-12 which begins on July 1, 2011.

Policy

- Will there be a sunset of this fee when the IWMA revenues pick up?

The draft regulations do not include a sunset clause. It is premature to include any sunset clause when it is unknown when, or if, and by how much, IWMA revenues may increase. In addition, since approximately 1/2 of the affected landfills do not currently contribute to the IWMA Fund, the fee generated by the proposed regulations may be a more equitable mechanism to fund the program.

- Can you provide a list of all programs within CalRecycle and whether each is considered essential or non-essential? And are these programs and the staffing supporting these programs being eliminated?

CalRecycle continually reviews its programs and financial resources and makes appropriate changes.

These changes are ultimately reflected in the Governor's budget and approved by the Legislature.

- We should also request that CalRecycle provide some vision of what they are considering for the long-term. Even when the economy picks up, the whole mission is to reduce land disposal. How does CalRecycle intend their mandates with an intentional decrease in revenue.

CalRecycle continually reviews its programs and financial resources and makes appropriate changes which are reflected in approved budgets.

Other

- Will this fee result in expedited review of the plans and financial assurances?

No, the implementation of the fee does not increase the current staffing levels.

- This is an unbudgeted expenditure for closed landfills that is beyond the Financial Assurance set aside and beyond corrective action funds already established. Any suggestions on where the money will come from? Local governments and public agencies have already cut as far as they can.

It is appropriate for each operator to determine how best to fund any expenses associated with the operation or maintenance of a landfill. CalRecycle is not privy to the financial wherewithal of each operator.